

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JENNIFER PORTILLO,

Plaintiff

Case No. 2:23-cv-00794-GMN-NJK

ORDER

v.

STATE OF NEVADA, et al.,

Defendants

**I. DISCUSSION**

Plaintiff Jennifer Portillo, who is in the custody of the Nevada Department of Corrections<sup>1</sup> (“NDOC”), has filed an application to proceed *in forma pauperis* (ECF No. 1-1) and has submitted both a civil rights complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1-1) and a petition for writ of habeas corpus under 28 U.S.C. § 2241 (ECF No. 1-2). The Court now addresses Plaintiff’s initiating documents and application to proceed *in forma pauperis*.

**A. Initiating documents**

Plaintiff cannot pursue both § 1983 and habeas actions in the same case. See *Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016) (reiterating that “habeas is the exclusive vehicle for claims brought by state prisoners that fall within the core of habeas, and such claims may not be brought in a § 1983 action”); *Wilkinson v. Dotson*, 544 U.S. 74, 81–82 (2005) (holding that “a state prisoner’s § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or its duration”). Plaintiff may pursue either her § 1983 complaint or her

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<sup>1</sup> In her May 19, 2023, letter, Plaintiff, who was still at the Clark County Detention Center (“CCDC”), noted that she was scheduled for transport to Florence McClure Women’s Correctional Center (“FMWCC”) later that day. (ECF No. 1-3). Plaintiff is no longer listed in the CCDC inmate database.

1 habeas petition in this case but not both. She may file the other action in a separate  
2 case.

3 **By July 21, 2023**, Plaintiff will file a notice with the Court indicating whether she:  
4 (1) wishes to pursue her § 1983 civil rights complaint (ECF No. 1-1) and strike her habeas  
5 petition (ECF No. 1-2) in this case; or (2) strike her § 1983 civil rights complaint (ECF No.  
6 1-1) and pursue her habeas petition (ECF No. 1-2) in this case. If Plaintiff does not  
7 designate one of these options, the Court will dismiss the entire case without prejudice  
8 because Plaintiff cannot proceed simultaneously on both her § 1983 complaint and  
9 habeas petition in the same case.

10 **B. *In forma pauperis* application**

11 Plaintiff's application to proceed *in forma pauperis* is incomplete because she has  
12 not submitted a completed financial certificate and an inmate trust fund account statement  
13 for the previous six-month period with the application. (ECF No. 1). The Court will deny  
14 Plaintiff's application without prejudice and give Plaintiff the opportunity to correct these  
15 deficiencies **by July 21, 2023**.

16 The United States District Court for the District of Nevada must collect filing fees  
17 from parties initiating civil actions. 28 U.S.C. § 1914(a). The fee for filing a civil-rights  
18 action is \$402, which includes the \$350 filing fee and the \$52 administrative fee. See 28  
19 U.S.C. § 1914(a)-(b). The filing fee for a habeas corpus action is \$5. *Id.*

20 "Any person who is unable to prepay the fees in a civil case may apply to the court  
21 for leave to proceed *in forma pauperis*." Nev. Loc. R. Prac. LSR 1-1. For an inmate to  
22 apply for *in forma pauperis* status, the inmate must submit **all three** of the following  
23 documents to the Court: (1) a completed **Application to Proceed in Forma Pauperis**  
24 **for Inmate**, which is pages 1–3 of the Court's approved form, that is properly signed by  
25 the inmate twice on page 3; (2) a completed **Financial Certificate**, which is page 4 of the  
26 Court's approved form, that is properly signed by both the inmate and a prison or jail  
27 official; and (3) a copy of the **inmate's prison or jail trust fund account statement for**  
28 **the previous six-month period**. See 28 U.S.C. § 1915(a)(1)–(2); Nev. Loc. R. Prac. LSR

1 1-2.

2 As explained above, Plaintiff's application to proceed *in forma pauperis* is  
3 incomplete. The Court will therefore deny Plaintiff's application to proceed *in forma*  
4 *pauperis* without prejudice and grant Plaintiff an extension of time to either pay the filing  
5 fee or file a new fully complete application to proceed *in forma pauperis* with all three  
6 required documents.

7 **II. CONCLUSION**

8 It is therefore ordered that the application to proceed *in forma pauperis* (ECF No.  
9 1) is denied without prejudice.

10 It is further ordered that Plaintiff has **until July 21, 2023**, to file a new fully complete  
11 application to proceed *in forma pauperis* with all three required documents: (1) a  
12 completed application with the inmate's two signatures on page 3, (2) a completed  
13 financial certificate that is signed both by the inmate and the prison or jail official, and (3) a  
14 copy of the inmate's trust fund account statement for the previous six-month period.

15 It is further ordered that, if Plaintiff fails to file a fully complete application to proceed  
16 *in forma pauperis* by the deadline, the Court will dismiss this case without prejudice.

17 It is further ordered that, by **July 21, 2023**, Plaintiff will file a notice with the Court  
18 indicating whether she: (1) wishes to pursue her § 1983 civil rights complaint (ECF No. 1-  
19 1) and strike her habeas petition (ECF No. 1-2) in this case; or (2) strike her § 1983 civil  
20 rights complaint (ECF No. 1-1) and pursue her habeas petition (ECF No. 1-2) in this  
21 case.

22 It is further ordered that, if Plaintiff fails to inform the Court whether she is pursuing  
23 her § 1983 civil rights complaint or habeas petition in this case, the Court will dismiss the  
24 entire case without prejudice because Plaintiff cannot pursue both actions simultaneously  
25 in the same case.

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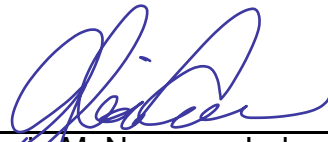
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1 It is further ordered that the Clerk of the Court is directed to send Plaintiff the  
2 approved form application to proceed *in forma pauperis* for an inmate and instructions for  
3 the same.

4 It is further ordered that the Clerk of the Court will update Plaintiff's address to  
5 Florence McClure Women's Correctional Center pursuant to her letter (ECF No. 1-3) and  
6 update her prison number to 1269516.

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8 DATED THIS 25 day of May 2023.

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12 Gloria M. Navarro, Judge  
13 United States District Court  
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